

June 29, 2007

Darryl Boyd  
Department of Planning, Building and Code Enforcement  
City of San Jose  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, California 95113

## **COMMENTS ON COYOTE VALLEY SPECIFIC PLAN DEIR**

Dear Mr. Boyd;

Every citizen has a responsibility to contribute to the preservation and enhancement of the environment (CEQA Statute 21000(a)). I have reviewed the biological resources and cumulative impacts sections of the Draft Environmental Impact Report for the Coyote Valley Specific Plan and find them to be insufficient in many respects. Of primary concern is the low percentage of land within the proposed development area which was accessible for biological survey. With a proposed project of this size, surveying only 57% of the area leaves huge areas of land, and the associated biological communities, unevaluated or insufficiently evaluated. Aerial photographs and “windshield surveys” are not remotely sufficient. Without an accurate description of the current status of the biological resources present in the plan area, the public and decision-makers do not have enough information to accurately assess the potential environmental impacts of this very large scale project. This lack of information precludes the informed decision making which is at the heart of CEQA requirements and intent. “Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context” (CEQA Guidelines 15125 (a)). “A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.” (Berkeley Keep Jets over the Bay Com. v. Board of Port Comrs., 91 Cal. App. 4th 1344 (Cal. Ct. App. 2001))

Even in the 57% of areas which were surveyed, the methodology employed in evaluating biological resources in those areas did not result in accurate, reliable data upon which to make decisions. The reader of a DEIR has the right to assume that the statement of current conditions and probable project consequences are based on sound science and substantial evidence. In the absence of substantial evidence, however, this DEIR often substitutes speculation, unsubstantiated and inconsistent opinion, or even inaccurate evidence as the basis of impact analysis. “An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to

make a decision which intelligently takes account of environmental consequences.” (CEQA Guidelines 15151) "The EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Assoc.* (1986) 42 Cal. 3d 929)

Compounding the problem is the disturbing tendency of this DEIR to alter the language of highly relevant facts as presented in the technical report so that they have a different meaning or to omit those facts altogether. I had to put together bits and pieces of information from the technical report to determine that 57 special status species occur within the plan area or have at least a moderate potential to occur in or adjacent to the plan area. Surely this is a highly significant piece of information which should have been made readily available to the reader.

In deciding whether and how biological impacts are to be considered significant, this DEIR has stated certain predetermined thresholds of significance. However, stating those thresholds is not enough. The DEIR needs to evaluate whether an impact is significant and what the appropriate mitigation would be to bring an impact below the level of significance based on those thresholds. In many cases, the DEIR fails to do so. A DEIR analysis is allowed and encouraged not to limit itself to the stated thresholds in an effort to protect the environment, but it is not allowed to ignore them. Adding further confusion to the issue is the puzzling omission in the DEIR of two of the eight thresholds of significance used by the WRA biological consultants in the preparation of their report. This very important omission needs to be rectified; neither the public nor the decision makers can properly evaluate the significance of biological impacts without knowledge of these other two thresholds.

Much of the discussion and analysis in this DEIR are marked by a lack of acknowledgement or understanding of the most basic principles of ecology. For instance, the DEIR makes due reference to the existence of special status species within and adjacent to the plan area, but throughout the discussion evinces little interest in the cause of their special status or appropriate plans for their maintenance. This omission becomes particularly egregious in the cumulative impacts section; the DEIR fails to evaluate the CVSP contribution to cumulative impacts in the context of past development. This failure precludes a meaningful discussion of the most frequent cause of the decline of biodiversity - degradation and fragmentation of habitat through development. “The purpose of the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code § 21000 et seq., is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind.” (*Berkeley Keep Jets over the Bay Com. v. Board of Port Comrs.*, 91 Cal. App. 4th 1344 (Cal. Ct. App. 2001))

## **COMMENTS ON SPECIFIC AREAS OF THE CVSP DEIR**

### **4.6.1 Introduction and Regulatory Framework**

*“The CVSP shall adequately compensate for all direct and indirect effects of the project, and will not preclude the development of a viable conservation strategy”*

This sounds quite proper, but something has gone terribly wrong here. The newly-released draft chapters of the Santa Clara Valley HCP/NCCP identify Coyote Valley as providing important wildlife connectivity between the Santa Cruz Mountains and the Diablo Range. In figure 5-6, the map shows important corridors both in the Tulare Hill area and going across the middle of Coyote Valley at about where that string of wetlands is south of Bailey Avenue in the CVSP development area. This corridor going across the middle of the valley provides connectivity for wildlife moving between Anderson Reservoir on the east side of the valley and Calero Reservoir on the west side. The connectivity value of this corridor has already been somewhat degraded through the building of roads and scattered agricultural, business and residential development. According to these draft chapters, “The connectivity between the Santa Cruz Mountains and the Diablo Range is expected to degrade further as covered activities are implemented. For example, the continued expansion of Morgan Hill and Gilroy will make it more difficult for some wildlife species to cross the valley floor. The expected implementation of the Coyote Valley Specific Plan at the southern end of San José is expected to contribute to this long-term degradation” And, yet, the draft states that acquiring the land to protect this important corridor is of low priority since it is slated for the CVSP development. The CVSP seems to be very much precluding the development of a viable conservation strategy.

## **Section 4.6.2 Biological Habitats**

In the technical report from the WRA consultants, this heading was “Biological Communities”. In fact, dozens of times the DEIR substitutes the word “habitat” for “community”, even when the rest of the sentence or paragraph was used intact from the technical report. “Community” is not a difficult technical term to understand and substituting the term “habitat” is not justifiable as a means to make the report more understandable to the public. In fact, it makes the report considerably less meaningful and creates a false impression of current conditions within the plan area. The Oxford English Dictionary defines community to mean, “A group of plants or animals growing or living together in natural conditions or inhabiting a specified area.” By contrast it defines habitat to mean, “The locality in which a plant or animal naturally grows or lives; habitation.” A community is a group of living organisms; habitat is merely a place. As this erroneous substitution of terms is made repeatedly throughout the DEIR, the result is to deemphasize the many plants and animals that live within the CVSP area. A DEIR must, “be organized and written in a manner that will be meaningful and useful to decision-makers and to the public” (CEQA Statute 21003 (b)).

### **Section 4.6.2.1 Agricultural Fields**

*“Agricultural fields do not, however, make very good long-term habitat for non-agricultural plant species or wildlife species due to the intensive management activities involved in farming.”*

This is a misquote from the technical report which reads, “However, agricultural fields and orchards do not generally provide suitable long-term habitat for less adaptive plant and wildlife species due to the intensive management activities involved in farming.” The statement as provided in the DEIR is quite misleading as there is a significant difference between “non-agricultural” and “less adaptive” species. “Though specific biological goals and objectives have not been developed for agricultural lands within the study area, those lands retain some ecological value for covered and other native species” (Santa Clara Valley HCP Draft Chapters, 2007).

Agricultural land is often less damaging than urban, suburban, or other more intensive uses (Kerr and Cihlar 2004). Agricultural land often serves as a buffer around natural areas, providing food, cover, and other critical components of habitat – enabling movement and exchange of plant and animal populations. Farmlands, including both the croplands and the patches of natural lands that are intermingled with them are home to many kinds of wildlife. (Heinz Center 2005). Most farmland species are associated with these remaining bits of habitat types that the croplands replaced: grassland, woodland and wetlands. As lands are further fragmented by development, farmlands as buffers with partial ecosystem function increase the survival of native species (Anderson and Bernstein 2003 as cited in Environmental Law Institute 2003).

#### **Section 4.2.6.1 Developed Areas**

*“Developed areas provide very limited habitat for plant and wildlife species due to high levels of human activity and landscape management.”*

This is an over simplification which results in inaccuracy. Not all developed areas are developed equally; they vary as to intensity and use. Some “developed” areas would be more suitable habitat for plant and animal species than others.

#### **Section 4.6.2.1 Seasonal Wetlands**

*“Almost all of the seasonal wetlands in the Development Area are located in agricultural fields and are highly disturbed due to annual plowing and other agricultural practices such as ditching.”*

An important omission occurred in this section as compared to the technical report. Missing is the statement, “Seasonal wetlands provide food, cover, and water for over 100 species of birds.” This is not something which is too technical for the average reader to understand and its omission fails to give the reader information on a vital biological use of these areas. Rather, the implication is that because the seasonal wetlands are in

agricultural fields and have been disturbed, they have little value. No evidence has been produced for this. Where are these wetlands? Is this in the area south of Bailey Avenue to which no access was allowed? Many special status species, such as California Tiger Salamander, rely on seasonal wetlands, as opposed to perennial wetlands, for part of their life cycle. The public and the decision makers need to know more about these highly sensitive biological communities of the CVSP area before an informed decision can be made.

#### **Section 4.6.2.1 Streams and Ponds**

This section has another important omission as compared to the technical report and ties closely into the omission above. Left out is, “Several ephemeral and intermittent streams tributary to Fisher Creek are present in the western portion of the Plan Area.”

Coincidentally, this area was not among the 57% of the acreage available for survey. The average reader not only does not have access to information on the biological resources in this important wetlands area, he will have to search hard to know it exists.

#### **4.6.2.2 Special Status Plants and Animals**

##### **Special Status Plant Species**

*“As previously described, the majority of the CVSP Area is agricultural in nature (actively farmed) with some areas of urban development.”*

Fifty percent is not a majority.

*“These areas do not provide suitable habitat for most rare plant species. Only one special status plant species (Mt. Hamilton thistle) was observed within the CVSP Area, while an additional four species have a moderate potential to occur. These species are summarized in Table 4.6-3.”*

Yes, those species are listed in Table 4.6.3. In contrast, the table is titled, “SUMMARY OF POTENTIAL FOR SPECIAL STATUS SPECIES TO OCCUR WITHIN OR ADJACENT TO THE CVSP AREA\*”. The title of the table does not match the contents; note the word ‘adjacent’. Special Status plants which have been documented to occur adjacent to the plan area were not listed. According to the technical report, they are as follows:

Coyote ceanothus  
Santa Clara Valley dudleya  
Fragrant fritillary  
Loma Prieta hoita  
Smooth lessingia  
Arcuate bush mallow  
Hall’s bush mallow

Metcalf Canyon jewelflower  
Most beautiful jewelflower

To make matters even less satisfying, the asterisk after “AREA” in the title is accompanied by the notation, “For detailed information, refer to Appendix H”. Appendix H is the tree survey.

### **Special Status Animal Species**

*“A total of 20 special status wildlife species are either documented to occur or have a high potential of occurring within the CVSP Area. These species are listed in Table 4.6-3, below. An additional 18 species were investigated and were found to have a moderate potential to occur, or are not present within the CVSP Area. These species are described in Appendix G and are not included in Table 4.6-3.”*

Once again the title of table does not match the contents. Nor does it match the preceding explanatory text. The table lists 16 special status animal species which are documented to occur within the plan area, four with a high potential to occur and two with a moderate potential to occur. It omitted two species with a high potential to occur:

Least Bell’s vireo  
Lawrence’s goldfinch

Also, since the table included two species with a moderate potential to occur, it should have included all the special status species with a moderate potential to occur. To do otherwise is misleading, not to mention confusing. They are as follows:

Fringed myotis  
Yellow Breasted Chat  
Bell’s Sage Sparrow  
Foothill yellow-legged frog  
Coast horned lizard  
Short-eared owl  
Costa’s Hummingbird  
Allen’s Hummingbird  
Lewis’ woodpecker  
American Badger  
Prairie falcon  
Double-crested cormorant  
American bittern  
Snowy egret  
Hom’s microblind harvestman  
Jung’s microblind harvestman  
Edgewood blind harvestman  
Opler’s longhorn moth

In addition, the San Joaquin kit fox has been documented adjacent to the plan area.

In total, the DEIR leaves out 30 special status species of plants and animals which occur in the plan area, have at least a moderate potential to occur in the plan area or are present adjacent to the plan area. Added to the 27 special status species which were included in the table, this makes a total of 57 special status species! From the perspective of more sensitive species, edge effects from development can extend hundreds or thousands of meters into the adjoining habitat (Environmental Law Institute 2003). The species listed above which occur adjacent to, but not actually in, the plan area still have a potential of being affected by the high density development and need to be properly enumerated and addressed. Additionally, "Protecting suitable but unoccupied habitat for covered species creates opportunities to enhance habitat through improved management, attracting species to new areas and expanding their ranges and population sizes. Protecting unoccupied habitat also allows for future shifts in populations in response to natural and anthropogenic environmental change" (Santa Clara Valley HCP, 5-13 2007). The presence of suitable habitat in the plan area makes this a prime location for restoration of those species to formerly occupied habitats.

The large number of special status species likely to be impacted should have been made clear to the reader as it is the legislative intent of CEQA to "prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history" (CEQA Statute 21001 (c)).

#### **4.6.2.4 Terrestrial Wildlife Corridors**

*"Large mammals, such as mountain lion (Puma concolor), require passages that are large enough to accommodate larger body sizes. Smaller wildlife species, such as American badger, can use culverts and other smaller passages."*

Some of those culverts are big enough for a person to stand up in.

*"Although some north-south movement within the CVSP Area may enable access to other undeveloped areas on the east and west sides of the valley, these developed areas prevent the CVSP Area from functioning as a significant north-south wildlife corridor on a regional scale."*

This opinion does not look at the landscape on a large enough regional scale. It assumes that the north to south corridors magically do not tie into the east to west corridors within the plan area which in turn tie into other north to south corridors outside of the plan area. Networks of intersecting corridors may provide for more effective migratory pathways, allowing greater opportunities for animal foraging and predator avoidance (Forman and Godron 1981).

*"Highway 101, located immediately outside of the CVSP Area boundary, is the most significant of these barriers. In addition to the heavy traffic along Highway*

*101, the northbound and southbound lanes (each having up to four lanes of traffic) differ in elevation by approximately 12 feet, and are separated by a median that is approximately 20 feet wide, resulting in the existence of a steep slope between the two directions. In addition, a vehicle crash wall approximately five feet tall is present at the top of the slope in the median. To cross this barrier, terrestrial wildlife would need to negotiate heavy traffic on both sides of a five foot wall that drops off to a steeper than 2:1 slope.”*

This is not accurate; at least, it is only accurate for a couple of spots along that section of Highway 101. In many places the crash wall is much lower, the difference in elevation between the two directions of traffic is much less and the median is much wider. An animal would have to look very hard to find a place to cross where there was a 2:1 slope and a five foot wall. As for the heavy traffic, even a major highway like 101 is a rather lonely place at two or three o'clock in the morning. This is not to say crossing Highway 101 would be easy, but rather that the DEIR painted a dramatic and colorful picture which failed in accuracy. Besides, there is a multiplicity of culverts, large and small, with and without water, which provide safe passage beneath the freeway.

The use of the word “barrier” is inaccurate and prejudicial. The Oxford English Dictionary defines barrier as, “A fence or material obstruction of any kind erected (or serving) to bar the advance of persons or things, or to prevent access to a place.” Here, and in other places, the term implies a complete blockage which is not the case. A more accurate term would be “obstacle”.

*“Within the CVSP Area, Monterey Road presents another major barrier to terrestrial wildlife movement. Monterey Road is a four-lane roadway with a six-foot high concrete and fence barrier separating the northbound and southbound lanes of traffic.”*

For an extensive distance on either side of intersections there is not a fence on top of the concrete wall so many sections of the road have a three-foot crash wall, if that. Also, that wall and fence have been crashed into numerous times resulting in many places where the fence has large holes. Most entertainingly, running along the bottom of the crash wall are slits about 18 inches long and 3 inches high (just estimating here), presumably for water to drain. These are plenty large enough for amphibians and small mammals to scoot through.

*“The two areas that are most likely to support the movement of terrestrial wildlife species are the Greenbelt and Tulare Hill/Laguna Seca area...Terrestrial wildlife species can currently cross Monterey Road at Bailey Avenue, Blanchard Road, and through the Fisher Creek culvert. The Coyote Creek Golf Course crossing of Highway 101, however, is two to three miles from these points, and larger terrestrial wildlife species would need to travel this distance in order to reach a safe crossing of Highway 101, or cross Highway 101 via the road overpasses at Bailey Avenue and Metcalf Road.”*



This opinion does not take into account the many culverts, some quite large which run under Highway 101 all along the middle and northern portions of the valley. The DEIR provides no good reason for choosing the Greenbelt, which is currently the most developed portion of the valley, as one of the most likely areas to support movement of terrestrial wildlife species. Data collected by De Anza College in cooperation with the Department of Fish and Game, which will be submitted in other comments to the DEIR, will refute the contention that other sections of the plan area do not provide significant connectivity for wildlife moving east to west. Those who would destroy the last remnants of natural connectivity should bear the burden of proving that corridor destruction will not harm the target population (Beier and Noss 1998).

#### **Section 4.6.2.4 Reptile and Amphibian Movement**

*“Reptile and amphibian species, such as California Tiger Salamander (CTS) and California Red legged frog (CRLF), are not known to require specific habitat components in movement corridors ,but they do require the presence of suitable habitat within proximity in order to move successfully between core habitat areas (Trenham, 2001, Bulger, et al. 2003). The amount of time required for reptiles and amphibians to successfully travel between core habitat areas means that the corridors need to be relatively undisturbed and barrier free, or contain suitable habitat areas spaced at distances that are reachable.”*

California Tiger Salamander can move several hundred yards in an evening (Semlitsch 1989 as cited in Austin and Shaffer 1992).

*“Aquatic habitat known to support CTS is present on both sides of the CVSP Area, and CRLF is known to occur in the Ogier Ponds in the Greenbelt. These occupied habitat areas are approximately two miles apart, which is the furthest dispersal distance known to be traveled by CTS, and further than the dispersal distance traveled by CRLF (USFWS, 2005, 2006b).*

This passage fails to mention the CTS which have been found in the wetlands area south of Bailey Avenue and that these wetlands are currently inaccessible to surveyors. There is no need for amphibians to disperse the width of the plan area as these wetlands lie within the northern portion of the plan area south of Bailey Avenue. Populations of CTS within the CVSP area may be necessary to the long-term survival of populations on either side of the plan area. The existence of multiple breeding ponds reduces the risk of extinction and because the CTS travel long distances, maintaining habitat conductivity for interpond dispersal should remain a priority (Trenham et al, 2001). Short linkages between breeding ponds are not necessarily better as it is the longer linkages which may provide better maintain regional connectivity. Without detailed study it may be impossible to differentiate between sink and source populations and it is best to protect areas with multiple ponds (Trenham, et al. 2000). And, as mentioned before, this wetlands area appears to lie within an important wildlife connectivity corridor across Coyote Valley (Santa Clara Valley HCP/NCCP Draft Chapters, Figure 5-6).

*“The land between these occupied habitats consists of plowed agricultural fields, developed land, highways, and other roadways. These land uses and barriers are not very compatible with the successful movement of most reptile and amphibian species.”*

The DEIR provides no evidence for the above assertion. The somewhat degraded condition of the land should not be an excuse for further degradation. Once local extinctions occur, they become easier targets for development which feeds a cycle of degradation and development (Pyke 2005).

*“Although some culverts exist beneath these barriers, the movement of reptiles and amphibians over dry land seems to be random (Trenham 2001, Bulger et al. 2003), and there is only a small chance that an individual would be able to find the existing culverts.”*

This is an incorrect citation. Neither Trenham nor Bulger characterizes the movement as random and neither of them discusses reptiles. CTS will travel through a variety of habitats, but show a preference for grassland or isolated oak habitat, presumably because this is where ground squirrel burrows are more likely to be found (Trenham 2001). The same study showed all CTS movements following breeding and greater than 15 meters (they may move several times), were away from the breeding pond. Just because they are not inclined to move in a straight line away from a pond does not make their movement random. And, of course, when breeding season comes around again, they will head toward a pond.

CRLF will make a beeline for ponds over a variety of terrains (Bulger et al. 2003). Once again this is hardly random movement. The conclusion that individuals would not be able to find existing culverts does not logically follow. Amphibian and reptile corridors have been established many places. Visit the Federal Highway Administration’s website to see a couple of these. They constructed long walls to keep the animals from crossing roads at the wrong places. When animals reach a wall they follow it along until they find an opening – a safe passage under a roadway. Granted, we do not have specially constructed amphibian walls in the CVSP area, but Highway 101 does present quite an obstacle. It seems more likely that dispersing amphibians would follow along this obstacle until they found an opening (culvert) rather than just giving up, turning around and going home.

### **Movement of Flying Species**

*“Pollinators, seed dispersers, and other flying species such as birds, bats, and insects, including the Bay checkerspot butterfly, use large patches of high value nesting or foraging habitat often associated with water for movement and dispersal corridors (Adams and Dove, 1989). These patches do not need to be directly connected to be suitable for use in movement between core habitat areas.*

*Existing long-term high value habitat for resident birds and insects or “stepping stone” dispersal areas within the CVSP Area include:*

- *Coyote Creek riparian zone and open water aquatic habitats;*
- *Fisher Creek riparian zone and open water aquatic habitats; and*
- *Serpentine grassland on Coyote Ridge, Tulare Hill, and foothills of the Santa Cruz Mountains.”*

This vaguely alludes to, but fails to actually mention, the extensive system of Fisher Creek tributaries and ponds which extend far to the west in the area south of Bailey Road.

*“Flying wildlife species are, however, affected by large areas of developed land that occur in the absence of stepping stone dispersal areas, and can be affected by heavy traffic use.”*

I do not remember seeing this impact addressed in the DEIR.

#### **4.6.2.5 Existing Biological Resources within the Bailey-over-the-Hill Alignment Special Status Plant and Animal Species**

*“The only special status plant species known to occur within the BOH alignment area is Santa Clara Valley dudleya. Santa Clara Valley dudleya is federally endangered and a CNPS List 1B species. It is a perennial herb that blooms from April to June and typically grows on rocky serpentine outcrops in valley and foothill grassland at elevations between 200 and 1,200 feet.”*

The WRA report says that, “no protocol level rare plant surveys have been performed throughout most of the alignment area”. As such, the list of special status species found in the BOH alignment area should not be considered representative of species which actually occur there. Also, the DEIR omits much important information especially in light of the admitted inadequacy of the survey. The WRA report says, “Special status plant species that have the potential to occur in the BOH alignment area include:

- Bent flowered fiddleneck
- Big scale balsamroot
- Bristly sedge
- Mt. Hamilton thistle
- Fragrant fritillary
- Loma Prieta hoita
- Smooth lessingia
- Hall’s bush mallow
- Metcalf Canyon jewelflower
- Most-beautiful jewelflower”

The DEIR mentions the California tiger salamander as the only special status species occurring within the BOH alignment area. The WRA report gives more complete and

useful information. It says, “*special status wildlife species with the potential to occur in the BOH alignment area, or that are known to occur on areas adjacent to the BOH alignment area or in similar habitat elsewhere in Santa Clara County include:*

- California tiger salamander
- California red-legged frog
- Western pond turtle
- White-tailed Kite
- Northern Harrier
- Western Burrowing Owl
- California Thrasher
- Least Bell’s Vireo
- Loggerhead Shrike
- San Francisco dusky-footed woodrat
- Opler’s longhorn moth
- Bay checkerspot butterfly
- Golden Eagle
- Tricolored Blackbird
- Foothill yellow-legged frog
- Double-crested Cormorant
- Prairie Falcon
- Short-eared Owl
- Costa’s Hummingbird
- Allen’s Hummingbird
- Lewis’ Woodpecker
- California Horned Lark
- Bell’s Sage Sparrow
- Fringed myotis bat
- Long-legged myotis
- Yuma myotis
- Pallid bat
- American badger

*The species listed above have habitat requirements that are present in biological communities in the BOH alignment area.”*

This is a total of 39 special status plant and animal species.

#### **4.6.3 Biological Resources Impacts**

##### **4.6.3.1 Thresholds of Significance**

Below are the thresholds of significance listed in the DEIR. The numeration is mine as I wanted to be able to easily refer to them later.

*“For the purposes of this project, a biological resources impact is considered significant if the project would:*

- 1) have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS; or*
- 2) have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFG or USFWS; or*
- 3) have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means; or*
- 4) interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites; or*
- 5) reduce the number or restrict the range of any special status species; or*
- 6) conflict with any local ordinances protecting biological resources, such as a tree preservation policy or ordinance; or*
- 7) conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.”*

Mysteriously, threshold 7 does not appear in the WRA technical report. It sounds nice, but is a bit ingenuous considering there is no *adopted* HCP or NCCP for this area. More importantly, when compared with the thresholds of significance listed in the WRA technical report, two thresholds are missing in the DEIR:

- 8) cause a fish or wildlife population to drop below self-sustaining levels
- 9) adversely affect species under the protection of the Migratory Bird Treaty Act (burrowing owls, nesting raptors, passerines)

The first of these excluded thresholds is important to this DEIR considering not only the habitat value of the plan area, but also its importance as connectivity between habitats in the Santa Cruz Mountains and the Diablo Range. Larger, connected habitats are necessary for maintaining the health of populations which are not currently at risk and preventing them from dropping below self-sustaining levels. The second is an important threshold which has special significance to this DEIR given that the DEIR itself states that over 100 species of birds use wide areas within the CVSP for foraging, breeding or nesting.

#### **4.6.3.2 Impacts to Biological Habitats**

Here is the place where the ongoing substitution of the term “habitat” for “community” becomes even more prejudicial. The WRA report quite accurately lists this section as,

“Impacts to Biological Communities”. In other words, this section deals with impacts to groups of living organisms (communities), not just the places where they live (habitats).

The organization of the DEIR furthers confuses the issue by regrouping, rearranging and rewording the biological impacts as listed in the WRA analysis. In the process, the meaning of some of the impacts was altered and some impacts were left out altogether.

### **Impacts to Agricultural Fields, Developed Areas, Non-native Grassland, and Coastal Sage-Chaparral Scrub**

*“Existing agricultural and ruderal agricultural fields are relatively disturbed and do not provide good long-term habitat for native plant or wildlife species and are not regulated as sensitive biological habitats by state, federal, or local regulations.”*

This is a misquote from the WRA report which says, “*However, agricultural fields and orchards do not generally provide suitable long-term habitat for less adaptive plant and wildlife species due to the intensive management activities involved in farming.*” The substitution of “native” for “less adaptive” quite changes the meaning.

***“Impact BIO-1: The proposed project would result in the loss of agricultural fields, developed areas, non-native grassland, and coastal sage-chaparral scrub biological habitats. While the loss of agricultural lands is a significant land use impact, it is not considered a significant biological impact because these lands are not considered to be sensitive biological habitats. [Less than Significant Impact]”***

It does not follow that this should not be considered a significant biological impact simply because these communities are not considered sensitive. CEQA certainly does not say this. This conclusion is not even internally logical to this report as it was previously stated that biological resources would be evaluated with respect to a specific list of thresholds. Take particular note of threshold 9 stated. The DEIR needs to actually evaluate the impact to these communities before it can reasonably support a conclusion of less than significant impact.

### **Impacts to Wetland and Open Water**

*“While most of the wetlands impacted are located in farmed agricultural fields and therefore have decreased functions and values when compared to non-farmed wetlands, the placement of fill in 137 acres of wetlands, 18 acres (50,179 linear feet) of streams, and eight acres of ponds is a significant adverse environmental impact.*

The DEIR should be evaluating the impacts to the diversity of wetlands communities based on substantial evidence and with respect to the stated thresholds. Appropriate mitigation cannot be determined without this.

### **Impacts to California Red-legged Frog and Foothill Yellow-legged Frog**

*“Development within 200 feet of aquatic habitat occupied by these species would also result in loss of habitat and potential take of individuals.”*

Where did this figure for 200 feet come from? The DEIR needs to supply the appropriate citations to support this.

### **Impacts to California Tiger Salamander**

*“In addition, fill placed in adjacent upland aestivation and dispersal habitat, which includes undisturbed areas containing small mammal burrows or other underground habitat within 2,200 feet of occupied aquatic habitat, would significantly impact CTS. The presence of existing barriers to dispersal, such as roads, or areas of intense disturbance, such as agricultural fields, reduces the area of suitable aestivation and dispersal habitat.”*

The DEIR needs to supply appropriate evidence to support the conclusion that aestivation and dispersal habitat is limited to undisturbed areas. Otherwise appropriate mitigation cannot be determined.

### **Impacts to Golden Eagle**

*“Golden Eagles have been observed foraging in the CVSP Area, although suitable nesting habitat within and adjacent to the CVSP Area is limited as described in Appendix G. The proposed project would result in loss of foraging habitat for this species. Due to the lack of quality nesting habitat, however, the loss of foraging habitat would be less than significant. If Golden Eagles nest within one-quarter mile of the CVSP Area, disturbance to nesting eagles during the breeding season (typically February 1 to July 1) could occur as a result of construction activities and increased human activity and presence of development near the nest over the long-term. This could result in nest abandonment or poor reproductive success which would be a significant impact.”*

I did refer to Appendix G and gleaned the following: “Permanent impacts to potential eagle foraging habitat in the Plan Area would occur as a result of project implementation. However, due to the lack of quality nesting habitat within the Plan Area, the loss of foraging habitat is expected to be adverse, but less than significant.... Although Golden Eagle has been observed foraging in the Plan Area, the loss of foraging habitat for this

species would be less than significant due to the abundance of suitable nearby foraging habitat and the ability of this species to forage over a wide area.“ If I understand this correctly, the implication of the first sentence is that Golden Eagle does not forage much outside of its immediate nesting area. Yet, the second sentence claims that Golden Eagle forages over a wide area. In trying to establish this area as unimportant as foraging area, the DEIR avers two mutually exclusive situations. The abundance of nearby foraging habitat does not automatically render the foraging habitat within the plan area insignificant. “The proximity of larger wilderness areas did not necessarily compel the conclusion that the site was insignificant to animal wildlife.” (Mejia v. City of Los Angeles, 130 Cal. App. 4th 322 (Cal. Ct. App. 2005))

### **Impacts to Nesting Special Status Avian Species**

*“White-tailed Kite, Northern Harrier, Loggerhead Shrike, Yellow Warbler, Saltmarsh Common Yellow throat, California Thrasher, Cooper’s Hawk, and California Horned Lark are all avian species that are known to occur within the CVSP Area. Permanent impacts to nesting habitat for these or other special status nesting avian species could occur during construction as a result of tree and shrub removal, ground disturbance, increased night-time lighting, and by direct mortality. However, due to the abundance of available nesting habitat in the surrounding area, this would not be a significant impact.”*

As discussed above, it does not logically follow that there would not be a significant loss of nesting habitat for these species simply because there is habitat in the surrounding area. In fact, the major reason many of these species have special status is their decline due to habitat loss and disturbance to nesting sites. California courts have not supported the notion that other available habitat renders a loss as insignificant. “The proximity of larger wilderness areas did not necessarily compel the conclusion that the site was insignificant to animal wildlife.” (Mejia v. City of Los Angeles, 130 Cal. App. 4th 322 (Cal. Ct. App. 2005))

### **Impacts to San Francisco Dusky-Footed Woodrat**

*“The San Francisco dusky-footed woodrat is documented to occur in riparian areas along Coyote and Fisher Creeks and is common and widely distributed throughout the region. Therefore, the loss of some individuals as a result of habitat removal would have a negligible impact on populations of this species throughout the region and is a less than significant impact. Impacts to Coyote Creek would not occur with the implementation of the CVSP.”*

Again we have the same faulty logic. Too many times decision makers have decided that the habitat they wish to destroy is not significant in the light of other habitat being available. These decisions cumulatively result in very significant impacts to wildlife species. I will cite the same court case as above. “The proximity of larger wilderness



areas did not necessarily compel the conclusion that the site was insignificant to animal wildlife.” (Mejia v. City of Los Angeles, 130 Cal. App. 4th 322 (Cal. Ct. App. 2005))

### **Pallid Bat and Yuma Myotis**

*“Although these bat species are not known to be present within the CVSP Area, roosting and foraging habitats are present. Foraging habitat is present over most upland and aquatic habitats. These species are able to travel great distances to forage, however, so impacts associated with a loss of foraging habitat would be less than significant.”*

Once again, it is not logical to assume that because there is other foraging habitat, the loss of large amounts of foraging habitat within the CVSP area would not be significant. No evidence has been submitted to support that speculation. A more reasonable speculation would be that a significant lessening of foraging habitat will result in the region being able to support significantly fewer Pallid Bat and Yuma Myotis. And, once again, the citation, “The proximity of larger wilderness areas did not necessarily compel the conclusion that the site was insignificant to animal wildlife” (Mejia v. City of Los Angeles, 130 Cal. App. 4th 322 (Cal. Ct. App. 2005)).

### **Other Breeding Birds**

*There are several common migratory bird species known to occur within the CVSP Area, including but not limited to Red-tailed Hawk, Red-shouldered Hawk, and American Kestrel. These birds are protected by the Migratory Bird Treaty Act. While nesting habitat for these species is locally and regionally abundant...the project would not result in a significant loss of nesting habitat...”*

The WRA report clarifies this a bit by conceding that permanent impacts to nesting habitat could occur as a result of construction. The fact that nesting habitat is available outside of the CVSP is not necessarily relevant to the level of impact. There are only so many animals of a given species which can be squashed from a larger area into a smaller area. This apparently just cannot be stated often enough: “The proximity of larger wilderness areas did not necessarily compel the conclusion that the site was insignificant to animal wildlife” (Mejia v. City of Los Angeles, 130 Cal. App. 4th 322 (Cal. Ct. App. 2005) ).

### **Impacts to Coast Horned Lizard**

*“Suitable habitat for coast horned lizard is present in the Santa Teresa Hills and may be present in undisturbed portions of the northern CVSP Area. Therefore, the proposed project could result in the loss of suitable habitat and/or direct take of this species. This would be a significant impact.”*

I do not recall that it was established within the DEIR that coast horned lizard needs undisturbed areas. The DEIR needs to provide evidence for this so that suitable mitigation can be determined.

### **Missing Bits and Pieces**

The WRA biological report also discusses impacts to American Badger. This impact is missing from the DEIR. As I mentioned at the beginning of this section, the organization and discussion of the impacts are much altered from the biological report. In addition to American Badger, I am quite frankly unsure of what else might be missing. Before the DEIR is recirculated, careful attention needs to be given to appropriate representation of the impacts. And just for the record, did the DEIR somewhere examine the impacts of the CVSP project in light of expected global climatic change?

#### **4.6.3.6 Impacts to Wildlife Movement**

*“Despite the existence of several major barriers to the movement of terrestrial wildlife species in the CVSP Area, there is evidence that some movement may occur across the Tulare Hill area. Additional terrestrial wildlife movement may also occur in non-native grassland and agricultural fields in the Greenbelt... The preservation of the Greenbelt as part of the CVSP would be beneficial to the preservation of wildlife movement corridors. Although a small amount of occasional inter-valley movement in the central portions of the CVSP Area may be affected, existing corridors in the Greenbelt and Tulare Hill areas would not be developed.”*

No substantial evidence has been presented to support the contention that Tulare Hill and the Greenbelt provide greater connectivity for wildlife than the area of the valley slated for development. Unsubstantiated opinion does not qualify as evidence. Therefore, the DEIR cannot make intelligent conclusions about what the impacts of development will be on wildlife movement.

In addition, having a broad system of corridors would help enhance overall resiliency in case a corridor is destroyed or degraded through unexpected occurrences (Noss 1991).

#### **4.6.4 Mitigation and Avoidance Measures for Impacts to Biological Resources**

##### **MM BIO-2.1:**

Wetlands come in many shapes and sizes, may be perennial or seasonal and occur in a variety spatial relationships with regard to other wetlands and habitats. As such they perform a large number of varied functions. The preferred mitigation indicated by the DEIR was to be concentrated within the Fisher Creek corridor. The lack of diversity of

the proposed wetlands suggests they would not function to the same level as the current wetlands. More consideration needs to be given to the unique quality of wetlands within the CVSP area so that appropriate mitigation can be designed.

**MM BIO-2.2:**

*“If stream acreage and length cannot be replaced within the relocated/restored Fisher Creek corridor, planting of appropriate riparian vegetation along Coyote Creek or Fisher Creek in the Greenbelt (which are in the same watershed) at a 2:1 ratio shall be implemented.”*

Some evidence needs to be presented that the planting of riparian vegetation is appropriate mitigation for loss of stream acreage and length. This is not intuitively logical.

**MM BIO-2.3:**

Same comment as above, only for pond mitigation.

**MM BIO-10.1:**

*“If fill of aquatic habitat occupied by CRLF and FYLF or surrounding upland habitat or other construction activity in occupied habitat is required, it shall be performed between July and November, during the non-breeding season.”*

A mitigation should result in the take of fewer individuals and this fails to do so. Sparing individuals during the breeding season only to crush them with fill during the non-breeding season does not result in a positive outcome.

**MM BIO-10.2:**

*“To offset impacts to aquatic, upland, or dispersal habitat containing CRLF and FYLF, the applicant shall provide off-site habitat conservation, either through a conservation bank and/or easement at a 3:1 ratio of like-habitat for every acre of occupied aquatic or upland habitat (within 200 feet of occupied aquatic habitat) filled or removed.”*

Evidence should be presented to show this figure of 200 feet is appropriate.

**MM BIO-10.7:**

*“Installation of permanent exclusion fencing around new residential or industrial developments when adjacent or near aquatic habitat shall be required to reduce access by pets. Pamphlets will be dispersed to all new residents explaining the importance of maintaining control of pets and avoiding sensitive areas in their area. Signage adjacent to preserve or mitigation areas shall be installed to provide information to residents in the area and discourage disturbance.”*

This assumes domestic pets will only enter the aquatic habitat if an entrance is available in the immediate vicinity of their homes. This does not sound like domestic pets I know. Evidence needs to be presented that this is suitable and effective mitigation.

**MM BIO-10.8:**

*“Where roadway widening or construction is to occur within a dispersal corridor, culverts, causeways, bridges, and/or overpasses shall be incorporated into the design to allow wildlife, including special status aquatic species, to disperse under roads, thereby reducing road kills.”*

This mitigation is disingenuous when the DEIR assumption is that there is no viable dispersal corridor across the valley floor in the area of planned development. Proper studies need to be done to establish the dispersal and migration patterns of animals in the region. Guesswork will not serve the purpose. Plus, no allowance is made for the impact increased traffic will have on wildlife crossing roads which are not slated for improvement. Furthermore, no mention is made of mitigating for the impact high density housing and commercial establishments will have on wildlife movement.

**MM BIO-11.1:**

*“If fill of aquatic habitat, or ground disturbance to upland habitat occupied by CTS is required, it shall be limited to the nonbreeding season (generally August through November).”*

As with CRLF and FYLF, this mitigation makes no sense. If the ground is “disturbed” in CTS upland habitat during the non-breeding season they will be crushed as they aestivate in their burrows. To spare them during the breeding season only to kill them a few months later is not a satisfactory mitigation.

**MM BIO-12.2:**

*“Development or disturbance in upland oviposition habitats (uplands within 200 feet of occupied aquatic habitat) will likely impact turtle nest sites. Any construction activity to take place adjacent to occupied aquatic habitat shall be surrounded by exclusion fencing to prevent turtles from entering the construction area and daily monitoring and repair of the fence shall occur.”*

This fails to address the issue of the loss of oviposition habitat. Supporting evidence needs to be provided that 200 feet is adequate.

**MM BIO-17.1:**

*“Construction activities or removal of vegetation should commence during the non-breeding season (September 1 and February 28) to avoid potential impacts to nesting special status birds. If avoidance of the breeding season is not feasible, a qualified biologist shall complete pre-construction surveys for breeding birds not more than 30 days prior to the onset of ground disturbance or tree removal...”*

Loss of nesting habitat is not addressed.

**MM BIO-20.1:**

This does not address the issue of the availability of other roosts.

**MM BIO-26.1:**

*“The project shall include appropriate measures to facilitate wildlife movement through the CVSP Area. The design of new roads, overpasses, fences, and other linear facilities should, where possible, remove existing obstacles to wildlife movement and incorporate design elements to promote, where possible, wildlife movement through the Tulare Hill area and the Greenbelt.”*

This does not address the issue of the movement of wildlife through what is now open space, but will be covered with structures. Roads and fences are important obstacles to movement, but most animals find it difficult to walk through buildings as well. Besides, the use of the words “should” and “where possible” do not give one much confidence in the reality of execution.

*“The project shall include a minimum 100-foot buffer on either side of Coyote Creek and Fisher Creek that will be maintained with natural vegetation to promote movement of wildlife along these creek corridors and prevent potential interference of wildlife movement by domestic animals.”*

The Environmental Law Institute (2003) did an extensive literary survey, *Conservation Thresholds for Land-Use Planners*, on recommended buffer widths for riparian and wetland communities. They found, “Based on the majority of scientific findings, land use practitioners should plan for buffer strips that are a minimum of 25 meters in width to provide nutrient and pollutant removal; a minimum of 30 meters to provide temperature and microclimate regulation and sediment removal; a minimum of 50 meters to provide detrital input and bank stabilization; and over 100 meters to provide for wildlife habitat functions.” Let’s see, 100 meters would be about 328 feet. This report said that these findings are based only on studies of birds and mammals. Core terrestrial habitat ranges from 159 to 290 meters for amphibians and from 127 to 289 meters for reptiles from the edge of the aquatic site (Semlitsch et al. 2003). The 290 meters for amphibians brings us up to 951 feet needed. “As development intensifies on the valley floor in this zone west of the creek, Coyote Creek will increasingly become the primary corridor for terrestrial wildlife moving across the valley.” (Draft Santa Clara Valley HCP/NCCP 2007). This makes sufficiently wide buffers even more important. Large areas of terrestrial habitat surrounding wetlands and riparian area are critical for maintaining biodiversity. According to the best scientific evidence, a skimpy 100 feet just is not going to do it.

**MM BIO-31.1:**

*“Surveys of biological communities, including a Section 404 delineation of wetlands and waters, shall be completed within the BOH alignment area prior to roadway design to determine impacts to these communities. Implementation of MM BIO-6.1 through 6.3 may be required.”*

This survey needs to be completed prior to the recirculation of the DEIR. This information is needed for appropriate public review and informed decision making.

**MM BIO-32.1:**

“A biological assessment report shall be completed within the BOH alignment area to determine whether the biological communities present have the potential to support special status plant species...”

This also needs to be done prior to the recirculation of the DEIR.

**SECTION 6.0 CUMULATIVE IMPACTS****6.1 INTRODUCTION**

*“The purpose of the cumulative analysis is to allow decision-makers to better understand the potential impacts which might result from approval of past, present and reasonably foreseeable future projects, in conjunction with the proposed project addressed in this EIR. The CEQA Guidelines advise that a discussion of cumulative impacts should reflect both their severity and the likelihood of their occurrence. To accomplish these two objectives, the analysis should include either a list of past, present and probable future projects or a summary of projections from an adopted general plan or similar document. The effects of past projects are generally reflected in the existing conditions described in the specific sections of this EIR.... For each subject area, the discussions below address the following aspects of cumulative impacts:*

- *Would the effects of the CVSP, when combined with the effects of all of the pending development, result in a cumulatively significant impact on the resources in question?*
- *If a cumulative impact is likely to be significant, would the contribution of the CVSP to that impact be cumulatively considerable?”*

This description started out well, but ended up disappointingly. It is partially true that the effects of past projects are reflected in the existing conditions of the CVSP site, but that does not provide sufficient rationale for ignoring those effects in a discussion of cumulative impacts. “A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval.” Citizens to Preserve the Ojai v. County of Ventura, 176 Cal. App. 3d 421 (Cal. Ct. App. 1985)

Merely placing the CVSP cumulative biological impacts within the context of current and immediate future projects tacitly presumes that we now have a baseline of healthy, intact ecosystems in our area. Yet, previously this DEIR went to great lengths in the biological resources section to explain the many deficiencies of our local landscape both as habitat and connectivity between other regional habitats. The biological report enumerated 57

special status species in the area. Inexplicably, the DEIR makes no clear connection between past development in the San Francisco Bay Area and the number of species at risk in and adjacent to the CVSP area. Such an omission makes it impossible to consider what impact further development will have. The contribution of CVSP development to the cumulative biological impacts can not be properly evaluated unless clearly placed within the context of the past biological impacts.

CEQA Guidelines 15130 discusses the need to consider a breadth of temporal and spatial impacts and to provide a reasonable explanation for limitations in the consideration:

“b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.”

### ***6.3.1.2 Cumulative Land Use Compatibility Impacts***

### ***6.3.1.4 Cumulative Loss of Open Space***

*“None of the cumulative project sites are designated as permanent open space in the General Plan. The cumulative projects, therefore, would not result in a cumulatively significant loss of lands previously designated for open space use.”*

***“Impact C-LU-3: The cumulative projects would not result in a cumulatively significant loss of lands previously designated for open space use. [Less than Significant Cumulative Impact]”***

#### **6.3.1.6 Conclusions regarding Cumulative Land Use Impacts**

***“Impact C-LU-2: Cumulative development would not result in a significant loss of open space.  
[Less than Significant Cumulative Land Use Impact]”***

At first I was thrown off by the change in numbering between sections – Impact C-LU-3 was accidentally listed as Impact C-LU-2 in the next section. Such things happen. What is really inexplicable is the change from “significant loss of lands previously designated for open space use” to “significant loss of open space”. No explanation was given for such a startling conclusion. Whatever the designated plan for that area may be, much of it clearly is open space now and build-out of CVSP will clearly result in the loss of large areas of that open space. “CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area. The legislation evinces no interest in the effects of proposed general plan amendments on an existing general plan, but instead has clearly expressed concern with the effects of projects on the actual environment upon which the proposal will operate.” (Environmental Planning & Information Council v. County of El Dorado, 131 Cal. App. 3d 350, 354 (Cal. Ct. App. 1982))

#### **6.3.6 Cumulative Biological Resources Impacts**

The discussion in this section reiterates a few species the DEIR previously stated may be impacted by CVSP build-out. As I previously noted, the impacts to a variety of species have been grossly underrepresented just within the context of the CVSP area. Beyond that, the problem is compounded by the limited projects considered for the cumulative impacts.

*“Since the other projects on the cumulative list would not contribute to these impacts, these project-specific impacts are not considered to result in a significant cumulative impact.”*

***“Impact C-BIO-1: The cumulative projects would not result in significant impacts to special status plant and animal species, and the proposed CVSP***



*project would not contribute towards a significant cumulative impact. [Less than Significant Cumulative Impact]”*

I addressed this issue in the introductory section. It makes no sense to consider the contribution of the CVSP to the cumulative biological impacts outside of the context of the biological effects of previous development. Previous habitat degradation and fragmentation in the San Francisco Bay Area is the cause of most, if not all, the special status species having that special status. Therefore, the project specific impacts the CVSP has on special status species through habitat degradation and fragmentation must also contribute to the cumulative impacts on those species. Furthermore, the cumulative impacts do not stop with the nominal species. The CVSP needs to be evaluated with respect to the cumulative impacts it will have on species which have not yet declined enough to warrant special status, but may well do so as a result of this project.

#### **6.3.6.4 Cumulative Impacts to Wetlands and Riparian Habitat**

*“Direct impacts to wetlands are regulated by law, as each project complies with a host of federal, state and regional permit requirements, including requirements of the U.S. Army Corps of Engineers, CDFG, and the Regional Water Quality Control Boards (RWQCBs). Each of these permitting authorities requires mitigation for the loss of wetland habitat.”*

*“Impact C-BIO-3: The projects considered in this cumulative scenario would not result in a significant cumulative direct impact to wetlands and riparian habitat, and the proposed project would not make a substantial contribution towards a significant cumulative impact. [Less than Significant Cumulative Impact]”*

Even if it were true that the propose mitigation reduced the impact to a less than significant level on a project specific basis, it does not automatically follow that it would make no significant contribution to a cumulative impact. The DEIR needs to provide evidence that this is so to justify not providing additional mitigation for cumulative impacts. In particular, the DEIR needs to address the impacts to wetlands and riparian habitats incurred by previous projects and then relate the findings to the impacts of the CVSP and other current and future projects. Wetlands and riparian areas are highly sensitive habitats; careful attention needs to be given to the pattern and type of wetlands both over the local and the broader region.

*Impact C-BIO-4: As described above, if the cumulative projects conform to the City's Riparian Corridor Policy by providing 100-foot riparian setbacks to avoid and reduce indirect impacts to riparian habitat and wildlife, then cumulative indirect impacts to wetland and riparian habitat can be avoided or reduced to less than significant levels. [Less than Significant Cumulative Impact]*

Accordance with a policy does not necessarily show a lack of significant impact. The DEIR needs to examine the robust data available in the literature on riparian buffers and

apply that to the CVSP area, first with consideration of the unique needs of the specific area and then in the context of cumulative impacts.

“It is not enough for an environmental impact report simply to contain information submitted by the public and experts. Problems raised by the public and responsible experts require a good faith reasoned analysis in response. The requirement of a detailed analysis in response ensures that stubborn problems or serious criticism are not ‘swept under the rug.’” “(Santa Clarita Organization for Planning the Environment v. County of Los Angeles, 106 Cal. App. 4th 715 (Cal. Ct. App. 2003))

Sincerely,

Joanne McFarlin

## REFERENCES CITED

- Anderson, M.G. and S.L. Bernstein 2003, editors. 2003 Planning methods for Ecoregional Targets: Matrix-forming Ecosystems. The Nature Conservancy, Eastern Conservation Science, Boston, MA
- Austin, C.C. and H. B. Shaffer 1992. Short-, Medium-, and Long Term Repeatability of Locomotor Performance in the Tiger Salamander. *Ambystoma californiense*. Functional Ecology. 6(2): 145-153
- Beier, Paul and Reed Noss 1998. Do Habitat Corridors Provide Connectivity? Conservation Biology. 12(6): 1241-1252
- Bulger J.B., N.J. Scott and R.B. Seymour 2003. Terrestrial Activity and Conservation of Adult California Red-Legged Frogs *Rana aurora draytonii* in Coastal Forests and Grasslands. Biological Conservation. 110(1): 85-95
- CEQA Guidelines: California Code of Regulations, Title 14, Chapter 3
- CEQA Statute: California Public Resources Code, Division 13
- City of San Jose, March 2007, Draft Environmental Impact Report, Coyote Valley Specific Plan
- Environmental Law Institute 2003. Conservation Thresholds for Land Use Managers. Washington D.C. Available at:  
[http://www.elistore.org/reports\\_detail.asp?ID=10839](http://www.elistore.org/reports_detail.asp?ID=10839)
- Forman, R.T.T. and M. Godron 1981. Patches and Structural Components for a Landscape Ecology. Bioscience. 31: 733-740
- Heinz Center for Science, Economics, and the Environment 2005. Available at:  
<http://www.heinzctr.org/ecosystems/report.html>
- Jones and Stokes, 2007, Santa Clara County HCP/NCCP Draft Chapters, Available on:  
[http://www.scv-habitatplan.org/www/site/alias\\_default/documents\\_draft\\_hcp\\_chapters/292/draft\\_hcp\\_chapters.aspx](http://www.scv-habitatplan.org/www/site/alias_default/documents_draft_hcp_chapters/292/draft_hcp_chapters.aspx)
- Kerr, Jeremy and Josef Cihlar 2004. Patterns and Causes of Species Endangerment in Danada. Ecological Applications. 14(3): 743-753.
- Noss R. 1991. Landscape Connectivity: Different functions at different Scales. Pages 24-40 in W. Husdon, ed. Landscape Linkages and Biodiversity. Defenders of Wildlife, Washington, DC
- Oxford English dictionary (Online) 2000. Oxford University Press. Oxford, UK

- Pyke, Christopher 2005. Assessing Suitability for Conservation Action: Prioritizing Interpond Linkages for the California Tiger Salamander. *Conservation Biology*. 19(2): 492-503
- Semlitsch, R.D. 1989. Terrestrial Movements of an Eastern Tiger Salamander, *Ambystoma tigrinum*. *Herpetological Review* 14:112-113
- Semlitsch, Raymond D. 1983. Biological Declination of Terrestrial Buffer Zones for Pond-Breeding Salamanders. *Conservation Biology*. 12: 1113-1119.
- Semlitsch, R.D. and J.R. Brodie 2003. Biological Criteria for Buffer Zones Around wetlands and Riparian Habitats for Amphibians and Reptiles. *Conservation Biology*. 17: 1219-1228
- Trenham, Peter C. et al. 2000. Terrestrial Habitat Use by Adult California Tiger Salamanders. *Journal of Herpetology*. 35(2): 343-346
- Trenham, Peter C., Walter D. Koenig, and H. Bradley Shaffer 2001. Spatially Autocorrelated Demography and Interpond Dispersal in the Salamander *Ambystoma californiense*. *Ecology*. 82(12): 3519-3530